

above case and in U. S. vs. 143 Packages, etc. This element, combined with the determinations, both direct and necessarily implied, of the juries in the previous cases as to effectiveness, clearly brings the instant action within the doctrine of res judicata as enunciated in the Henderson case, supra.

"The entire history of the manufacture and sale of Nue-Ovo is marked by questionable promotional methods. This most recent mode of labeling is merely another subtle maneuver adopted for the purpose of avoiding the dictates of the Food and Drugs Act and inducing a gullible public to purchase a worthless product for the cure of rheumatism and arthritis. The language of U. S. vs. 95 Barrels of Vinegar, 265 U. S. 438, equally well describes the activities of the claimant in the instant action:

The statute is plain and direct. Its comprehensive terms condemn every statement and device which may mislead or deceive. Deception may result from the use of statements not technically false or which may be literally true. The aim of the statute is to prevent that resulting from indirection and ambiguity, as well as from statements which are false. It is not difficult to choose statements, designs and devices which will not deceive. Those which are ambiguous and liable to mislead should be read favorably to the accomplishment of the purpose of the act.

"Accordingly, therefore, the Government's motion for summary judgment is granted. The Government is hereby directed to submit to the Court, within 15 days, a form of judgment and a form of decree of forfeiture and condemnation."

On November 16, 1949, in accordance with the above decision, a decree was entered providing for condemnation and destruction of the product.

**2964. Misbranding of Remin's Brewers' Hydrolyzed Yeast Powder, Remin's Multi-Vitamin A-B-C-D Drops, Remin's Brewers' Hydrolyzed Yeast and Whey Powder, and Remin's (Powdered) Hydrolyzed Brewers' Yeast Vegetables and Whey.** U. S. v. Eugene A. Kazmark (M & M Service). Plea of guilty. Fine, \$10. (F. D. C. No. 25624. Sample Nos. 16849-K to 16852-K, incl.)

**INFORMATION FILED:** August 4, 1949, Northern District of Illinois, against Eugene A. Kazmark, trading as M & M Service, at Joliet, Ill.

**ALLEGED SHIPMENT:** On or about April 13, 1948, from the State of Illinois into the State of Wisconsin.

**LABEL, IN PART:** "Remin's Brewers' Hydrolyzed Yeast (Powder) A Supplementary source of Hydrolyzed Brewers' Yeast and its natural vitamins B<sub>1</sub> and B<sub>2</sub>," "Remin's Multi-Vitamin A-B-C-D Drops In A Base Of Brewers' Yeast Extract," "Remin's Brewers' Hydrolyzed Yeast and Whey Powder A Supplementary source of Hydrolyzed Brewers' Yeast and its natural vitamins B<sub>1</sub> and B<sub>2</sub>," and "Remin's (Powdered) Hydrolyzed Brewers' Yeast Vegetables and Whey."

**NATURE OF CHARGE:** *Remin's Brewers' Hydrolyzed Yeast Powder, Remin's Brewers' Hydrolyzed Yeast and Whey Powder, and Remin's (Powdered) Hydrolyzed Brewers' Yeast Vegetables and Whey.* Misbranding, Section 502 (a), certain statements in booklets and in a leaflet accompanying the articles were false and misleading since the articles would not be efficacious for the purposes, and would not fulfill the promises, of benefit stated and implied. The booklets were entitled "Remin's \* \* \* Descriptive Price List," "Facts About Vitamins, Amino Acids and Hydrolysates," "Keep in Step with the March of Progress," and "For Protein Vitality Try Remin's Hydrolyzed Yeast," and the leaflet was entitled "Miracle Cure Laid to Diet." The false and misleading statements in the booklets and in the leaflet represented and suggested that the articles would be efficacious in the cure, mitigation, treatment, and prevention of fatigue, sleeplessness, nervousness, neuritis, poor appetite, loss of strength, constipation, and skin disorders; that the articles would be efficacious in the prevention of poliomyelitis (infantile paralysis),

sterility in the male, baldness, great disturbance in the menstrual cycle in the woman, sex gland deterioration, malformation of tooth enamel, and cataracts of the eye; that they would be efficacious in the prevention of an upset in the reproductive cycle in women; that they would be of value to the nervous system; that they would be efficacious in preserving the integrity (health) of the liver and in preventing damage to the liver; that they would be efficacious in old age to maintain nitrogen balance where there is inadequate gastric and pancreatic secretion, impaired absorption, and other gastrointestinal disorders; that they would aid in preventing nutritional edema and be of help in hemoglobin regeneration in cases of nutritional anemia; that they would help increase the gamma globulin in serum protein and would be efficacious in increasing resistance to infections; that they would help to assure adequate protein intake during pregnancy and lactation; that they would be efficacious in the treatment of severe burn cases, fracture, and dislocation; that for patients with gastric ulcers, the articles would be efficacious for the repair of damaged tissue and to speed healing; that the articles would be efficacious in preventing hypoproteinemia, in speeding tissue repair and recovery from operations, in restoring degenerate tissue caused by disease and reflex atrophy, and in the treatment of loss of blood, severe wounds, and bleeding ulcers; that they would help to maintain a positive nitrogen balance in cases of severe diarrhea; that they would be efficacious in the cure, mitigation, and treatment of glandular disorders and infections, simple anemia, pernicious anemia, halitosis (bad breath), cancer, cirrhosis and cirrhotic conditions, acne, pimples, dry skin, diabetes, and glossitis; that they would be efficacious in the cure, mitigation, treatment, and prevention of arthritis and colds; that they would be efficacious in the prevention of cataracts; that they would be efficacious in checking the appetite for alcohol; that the articles, plus copper and the enzyme, tyrosinase, would aid in relieving the condition of malnutrition which has as one of its symptoms the premature graying of the hair; that the articles would aid nature in the postponement of old age; that they would be efficacious in protecting one against overweight; that they would improve the assimilation of food by the undernourished; that they would build up tissues; that each article was essentially a potent normalizing agent; that the articles would be efficacious in the cure, mitigation, and treatment of stomach ulcers and of tumors; that they would be efficacious in maintaining normal health and in changing abnormal to normal conditions; that they would promote nutrition of the reproductive organs and contraction of the muscles; that they would be efficacious in counteracting cancer; that they would promote growth and the formation of red blood corpuscles, protect vitamin C from destruction, and be efficacious in the cure, mitigation, treatment, and prevention of nausea, dizziness, and ear damage; that each article was a special detoxifying agent; that the articles would protect against liver cirrhosis, enable an excess of one amino acid to be converted into others more needed at the moment, and aid in destroying the allergic poison, histamine; that they would retard destruction of vitamin C, counteract nicotine poisoning, and increase vitamin C in the tissues; that each article was an effective detoxifying agent for indole and other poisons found in arthritic conditions; that each article was a powerful detoxifying agent; that the articles would promote glycogen (energy sugar) formation and would aid in gastric secretion and in the prevention of anemia; that each article was a good detoxifying agent, especially for excess sex hormones which would otherwise favor cancer formation; that the articles would be efficacious in

the formation of cartilage, and in the cure, mitigation, treatment, and prevention of allergy, pregnancy difficulties, hay fever, and asthma; that they would aid the liver in the formation of glycogen; that they would be efficacious in the formation of hemoglobin, in the production of antibodies against infection, and in counteracting rancidity in fats; that they would be efficacious in the formation of blood, development of membrane cells, and production of thyroid hormone and adrenaline; that they would provide resistance against disease; that they would be effective in the cure, mitigation, and treatment of ailments from the common cold to serious heart infection; that each article was a general cure for all poisonous conditions of the body cells however caused; that the articles would be efficacious in the control of gastric ulcers; that they would be effective in the cure, mitigation, treatment, and prevention of pneumonitis, rheumatic fever, asthma, rheumatic arthritis, emphysema, coronary sclerosis, arteriosclerosis, pernicious anemia, and most infections under the common cold; that they would assure one of protein vitality and provide sufficient heat and energy for normal needs; that they would be of value where the natural digestion is not working correctly; that they would be efficacious in the cure, mitigation, and treatment of many disorders of the body; that they would help insure against malnutrition and hypoproteinemia in childhood; and that they would be of benefit to persons who are only able to absorb or assimilate a portion of the proteins which they actually consume every day.

*Remin's Multi-Vitamin A-B-C-D Drops.* Misbranding, Section 502 (a), certain statements in booklets entitled "Remin's \* \* \* Descriptive Price List 1947" and "Facts About Vitamins, Amino Acids and Hydrolysates," accompanying the article, were false and misleading. The statements represented and suggested that the article would be efficacious in the cure, mitigation, treatment, and prevention of fatigue, sleeplessness, nervousness, neuritis, poor appetite, loss of strength, constipation, and skin disorders; that it would aid in building up resistance against colds and would improve a sense of nutritional well-being; that it would be efficacious in the prevention of poliomyelitis (infantile paralysis); and that it would be efficacious in preserving the integrity (health) of the liver and in preventing damage to the liver. The article would not be efficacious for these purposes and would not fulfill the promises of benefit stated and implied.

The articles were alleged also to be misbranded under the provisions of the law applicable to foods, as reported in notices of judgment on foods.

DISPOSITION: September 19, 1949. A plea of guilty having been entered, the court imposed a fine of \$10.

**2965. Misbranding of Whitmer's Black Diamond Liniment, Whitmer's Eureka, and Whitmer's Red Carminative.** U. S. v. The H. C. Whitmer Co., Inc. Plea of guilty. Fine, \$500. (F. D. C. No. 26693. Sample Nos. 19438-K, 19441-K, 19442-K, 44020-K.)

INFORMATION FILED: June 2, 1949, Southern District of Indiana, against the H. C. Whitmer Co., Inc., Columbus, Ind.

ALLEGED SHIPMENT: On or about April 5, 19, and 24, 1948, from the State of Indiana into the States of Ohio and Kentucky.

LABEL, IN PART: "Whitmer's Black Diamond Liniment \* \* \* Active Ingredients: Turpentine Fractions, Linseed Oil, Camphor, Pine Oil," "Whitmer's Eureka Alcohol 15% \* \* \* Active Ingredients: Buchu, Uva Ursi, Culver Root, Juniper Berries, Alexander Senna, Caraway Seed, Gentian Root,